MT LEGISLATIVE HISTORY

Chapter 364 1974

Bill (H) 556 S _____ Original bill & hist. ___C

H. Committee on Local Govt.		S. Committee on Local Govt.	
Hearing Date(s) Feb 07 '73	✓C	Hearing Date(s) Feb 21 '74	✓C
_____	___C	Feb 28 '74	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Feb 07 '73	✓C	Feb 28 '74	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

ROLL CALL VOTE --- Local Government COMMITTEE - 42ND LEGISLATIVE SESSION 1971

	Date: 1/15/73 No.: H.B.24	Date: 1/17/73 No.: 118	Date: 2/14/73 No.: SB 228	Date: 2/14/73 No.: SB 229	Date: 2/5/73 No.: HB 534	Date: 2/5/73 No.: HB 476	Date: 2/7/73 No.: 556
Kosena							
Kendall	yes	no	yes	yes	no	yes	yes
Bradley	yes	yes	yes	yes	no	yes	yes
Cox	yes	yes	no	no	yes	yes	
Holtz	no	yes	no	yes	yes	yes	yes
Jacobsen	yes	yes	yes	yes	yes	yes	yes
Jones	yes	yes			yes	yes	no
Lockram	yes	yes			yes	no	
Lombardi	yes	yes					
Marks	yes	yes			no	yes	yes
Kimble	yes	yes					yes
Mahrans	yes	yes			yes	yes	yes
Roberts	yes		yes	yes	yes	yes	
Schepans	yes		yes	yes	no	yes	yes
Smith	yes	yes			yes	no	no
Turman	yes	yes	yes	yes	no	yes	
Zimmer	yes	yes					no

ROLL CAI

Albe
Orin
Doro
Henr
Malc
Glen
Tom
Lloy
Robe
Gary
John
Joe
Henr
Carl
Georg
Willi
Jerry

February 7, 1973
Proceedings of the
Local Government Committee

The meeting was called to order at 8:00 by Chairman Kosena. The secretary called roll. Absent were Representatives Cox, Lockrem and Roberts. Excused were Representatives Zimmer and Lombardi.

HOUSE BILL 409: Chief sponsor was Representative Schye. Proponents were he and Dan Mizner, League of City and Towns. Opponent was Tom Mulholland, Liquor Control Board. The committee did not vote on this bill that day.

HOUSE BILL 540: Chief sponsor was Representative Ainsworth. There were no proponents or opponents. The committee gave the bill a unanimous do pass.

HOUSE BILL 556: Chief sponsor was Representative Fagg. Proponents were Dan Mizner, League of City and Towns, Polly Prchal, Billings, Walter Anderson, Helena, Jean Anderson, League of Women Voters. Opponent was R.A. Ellis, Volunteer Fireman. The committee voted and gave the bill a do pass as amended. Voting no were Representatives Zimmer, Jones and Smith.

HOUSE BILL 544: Chief sponsor was Representative Greely. There were no opponents or proponents. The committee gave the bill a unanimous do pass as amended.

HOUSE BILL 496: Chief sponsor was Representative Hall. Proponent was Wally Stephens, Firemen's Association. Opponent was Dan Mizner, League of City and Towns. The committee gave the bill a unanimous do pass.

Other bills being voted on which had been held up and were voted on in executive session were
HOUSE BILL 389: Unanimous do not pass.
HOUSE BILL 465: Unanimous do pass.
HOUSE BILL 424: Do pass with Representative Jones voting no.
HOUSE BILL 213: Being held over until 1974.
HOUSE BILL 274: Being held over until 1974.

With no further business the meeting was adjourned.

Albert E. Kosena
ALBERT E. KOSENA, CHAIRMAN

Laurie Darragh
Laurie Darragh, secretary

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

February 21, 1974

The eighteenth meeting of the Local Government Committee was called to order by Chairman Thiessen on the above date in Room 410 of the State Capitol Building at 10:30 a.m.

ROLL CALL: All members were present with the exception of Senators McOmber and Harrison.

CONSIDERATION OF HOUSE BILL NO. 556: Establishing prerequisites and procedures for municipalities to annex contiguous areas and authorizing freeholders to petition for annexation; requiring municipalities to plan the extension of governmental services to such areas; and providing for judicial review of annexation proceedings.

Dan Mizner, representing the League of Cities and Towns and speaking for Representative Fagg the sponsor of the bill, said this bill outlines the procedure of the planned growth for extending boundaries of cities and towns. Section 4 provides that the governing body may extend the corporate limits of the municipality or if the residents of an area desire annexation, they may file a petition and if 51% of the resident freeholders sign that petition it gives them an opportunity to come into the city on their own initiative. He noted that on page 4, line 23, the word "truck" should read "trunk". Under the provisions set forth in section 5, the city must provide a plan for extension of services to the area to be annexed and the method of financing. It is put on the ballot and if those people in that area vote down the proposal then they cannot be annexed. Under section 6, provides that the total area must be contiguous to the municipality. He proposed an amendment to page 7, line 16, by adding a subsection (d). A copy of the amendment is attached hereto. If the governing body of a municipality desires to annex an area there has to be a public notice and a hearing and it provides for a court review. There are hearings held and they have to present to those people the method by which they plan to give them those services. The effective date of annexation may be any date within 12 months from date of passage of the ordinance. If the residents don't want the annexation, they may file a petition in district court to say that the statutory provisions have not been met. The court may remand the ordinance to the municipal governing body if procedural irregularities are found. This is a court review procedure and is not like our present annexation laws. The judge may hold hearings and determine if it is a benefit to the entire area and the people living in it and, if so, it can be annexed. He stated suburban growth in communities threatens the city tax revenue in the business community, because while government costs increase, the city tax base does not, in fact it may decrease. Montana annexation laws fail to meet the need of the time and make annexation nearly impossible. The basic annexation procedure has not been altered since 1905. Cities have been burdened by the freeholder statute that is limited to first class cities. Montana has no viable annexation procedure which will assure the success of reasonable annexation attempts. No distinction

should be made between first class and second class cities. It should be based on rule of reason.

Bob Ellis, representing Montana State Volunteer Firemen, testified that he had been instructed not to oppose this bill as long as the amendment presented is included in the bill.

In response to a question from Senator Aber, Dan Mizner said the initiative starts with the people. They may petition to continue to have the fire department as a service. Their tax base would remain the same. Senator Aber said he feels it is infringing on a man's freedom if the city comes out and takes in his 10 acres and charges him city taxes if he can't qualify under the Green Belt Act; it should exempt original owners someway. It makes it so he can't afford to live there. Dan Mizner said they have to look at total concept of society and what society has to do to live with things they now have.

Dan Mizner said whether the city takes an area in annexation or not the residents may petition to come into the city and if the city refuses to annex the area the people may go to court. The city has nothing to do with setting rates, the commission sets the rates. The city starts the rate procedure but the rate that is charged is left to the commission. Under the provision in this bill if there is already sewer and water services in an area, then those people are not charged water relative to the services they have already paid for for a period of five years after annexation.

Senator Romney asked if an area outside the city has no water or sewer and it is annexed is there anything in this bill that makes them put sewer and water in before annexation. Dan Mizner said there is no method of extending these services. It is put to the vote of those people in the area to be annexed. Senator Romney asked if there is a vote and the vote fails is there a time limit before they can have another vote. Dan Mizner said he thinks it cannot be done for at least 12 months to prevent harrassment. Senator Romney said when a certain area is voted on and voted down two or three times so it is demonstrated that the people don't want it then it can be taken before a district judge and he may not even live in the city or even the county and he decides it is for the betterment of the city and superimposes his judgment on the people who have voted against it. Dan Mizner said if it is voted down it does not go before the court. There may be an area being served with sewer and water by the city and maybe at no cost to those people, the procedure then is to go before the court.

Senator Goodheart said they are not repealing any annexation laws, but the provisions of this act shall be controlling. What kind of a headache will this make? Dan Mizner said that was added so that if there is a conflict, they can go directly to the judge without jury and this shall be the controlling provision. It will only be a headache in case of a conflict.

Senator Klindt observed that there are no exceptions in the bill whatsoever. They can annex any area - a golf course for example. Dan Mizner said it could be excluded by meandering the lines around it, but if it goes to court and they feel it is beneficial for that to be part of the area it could be annexed.

Senator Northey said the amendment proposed makes the bill even worse. Missoula is almost completely surrounded by municipal fire districts. This amendment would prevent them from annexing anything. Dan Mizner said the area has to adjoin the city and 1/8 of the area must butt on the city limits. The areas affected by by the fire districts are Butte, Missoula, part of Helena and Black Eagle. It does not affect Billings except for one area.

Chairman Thiessen appointed a sub-committee to study this bill and report back next Thursday, February 28: Senator Hall, Chairman; Senator Northey; Senator Klindt; and Senator Romney.

CONSIDERATION OF HOUSE BILL NO. 883: Senator James, chairman of the sub-committee appointed to study this bill, reported that they had finally agreed on a solution. Those who wish to continue giving the public all possible information may do so and, in addition, have added a number of other things to give the public a greater grasp of what their commissioners are doing in their counties. Publishing claims is offset by a posting and that has a lot more merit than the summary the bill provided for. In addition, the amendment would require the publishing of the budget with five categories. From the standpoint of the public that is the information that is very valuable. It provides that it be published once before budget hearing and will call hearing to the attention of all voters and this will give additional notice. Preliminary budget and budget adopted will be published and that might develop an interest in coming to the budget hearing. From the standpoint of the press it will require more publication. It will eliminate entirely the publishing of claims; they will be posted. He said he would also like to have included in the bill a provision to give notice that a listing of claims are posted in full at the courthouse.

Senator Northey asked if the net result would be to increase or decrease publication in the newspaper. Senator James said their aim is to inform the public and were not worried about newspapers but thought it would be about the same. Senator Northey said he thought the original intent of the bill was to cut down on costs and he is not sure this is being done. Dean Zinnecker, Montana Association of Counties, said in some cases it will increase publication but at least it will be a benefit to the public.

Charles H. Mahoney, former state legislator representing himself, said this is exactly wrong to what the last constitution did - to try to make an openness of government. This is just another thing taking that away. The average rank and file person will say who got what. Then he is forced to go to the courthouse. If that person went over the claims at the courthouse it would take about 10 minutes. Think how many people are going to take the time and how long it will take. He would hold to open up government instead of try to

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974 Date 2-21-74

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CORNIE, Chrmn.	✓		
GOODHEART, B.J. (SWEDE), Vice Chrmn.	✓		
ROMNEY, MILES-D	✓		
HALL, MRS. BOOTS-D	✓		
JAMES, DAVID-D	✓		
MCOMBER, GORDON-D			
ABER, LARRY-R	✓		
HARRISON, TOM-R			
KLINDT, HERB-R	✓		
NORTHEY, HARRY-R	✓		
STORY, PETE-R	✓		

Each day attach to minutes

Proposed Amendment of H. B. 556.

Insert in Section 6)2), after sub-paragraph (C)

"(D) no part of the area shall be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of Chapter 20, of Title 11, R.C.M. 1947, provided that such fire district was originally orgainzed at least ten (10) years prior to the inception of such attempted annexation."

DATE February 21, 1974

HB 781

COMMITTEE ON LOCAL GOVERNMENT BILL NO. HB 556, HB 587

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One: Support	Oppose
Bob Pyles	Montana State Firemen	HB 556	✓	
Jean A. Mariner	Mont. League of Cities & Towns	HB 556 HB 781	✓	
Charles H. Mahoney		HB 3		✓
Dean Zimmerman	Mt Assn of Counties			

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

February 28, 1974

The twenty-first meeting of the Local Government Committee was called to order by Chairman Thiessen on the above date in Room 410 of the State Capitol Building at 10:30 a.m.

ROLL CALL: All members were present with the exception of Senators McOmber and Harrison.

SUB-COMMITTEE REPORT ON HOUSE BILL NO. 556: Senator Hall, Chairman of the sub-committee, said the committee was in agreement to accept the amendment offered by the Volunteer Firemen's Association. A copy of the amendment is attached hereto.

Senator Hall made a motion that the amendment be accepted as written. Seconded by Senator Klindt.

In response to questioning, Dan Mizner told the committee if people in an area wanted to be annexed they may, with the provision that the fire department itself would furnish that protection to that area. The city could not go out and take them in and dissolve the fire department. If the people want to come in, then they can provide for that fire protection and they will not be taxed on that fire district or it can be operated as a special improvement district.

Senator Northey said he still feels it would prevent annexation. Senator James said it is another thing that has to be solved in that annexation. Senator Northey said they should bring them into the department but maintain it by the city. Senator Aber asked why the stipulation was 10 years, wouldn't it also affect a fire district that was only two years old? Bob Ellis, representing the Volunteer Firemen's Association, said the purpose was that the volunteer fire district operates at a cheaper rate and have more firemen available. This is to stop them from starting up a fire department just as soon as a city wants to annex and stop the city from using their fire equipment and using this as a tax base. The 10 year stipulation is what the cities asked for. Dan Mizner said this protects only those areas in Missoula, Helena and Billings. The only area that would be affected would be Black Eagle and they don't want to annex that area anyway.

Motion carried unanimously.

Senator Klindt made a motion that HB 556 BE CONCURRED IN AS AMENDED. Seconded by Senator Hall. Senator Story made a substitute motion that it BE NOT CONCURRED IN. Seconded by Senator James.

Senator Story said if they were giving awards for the worst bill this would certainly deserve the nomination. What they are doing here is not in the best interests of the cities Dan Mizner represents city governments, not necessarily cities. This type of bill slips us further from democracy into dictatorship. The reason they give for doing this is the urban sprawl. People are leaving the cities because

because they can't afford to live there. They are running a Cadillac of government on a Volkswagen economy. This permits annexation whether people want it or not. The cities no longer have to sell themselves. He is completely in opposition to section 8, article 2. People have never had a vote as to annexation or procedure to annex. 50% of the people might say "no" but the city could say a lot of people didn't say "no". This should say "unless 50% of those voting". At least it would afford the people some opportunity to say no. Urban sprawl is about to come to an end. People can't afford to move out with the subdivision laws so this is self-correcting. Desires of people give way to public benefit as stated by public officials. If they were to make one amendment on page 6, line 13, by striking the words "should a negative" and say "unless a positive" vote be cast by over 50% of the resident freeholders the section or sections to be annexed shall not be annexed then they could make an annexation of the positive affirmation of the people to be annexed. City fathers in the past have sold city services to outlying areas at a high cost. A better correction is to stop making bad deals by city fathers. He agreed with half of the bill that says if they cannot provide services they shouldn't be annexing.

Senator Northey said he would answer in part the allegations of Senator Story that it is the poor people who are moving out in the suburbs. It is usually the people who are a little better than average class financially. These same people make demands on the cities to use their services. They want full advantages without any of the cost. Cities are justified in annexing areas contiguous to their limits. In most instances the fire districts do not have the equipment the cities have and try to enter into agreements with the city. If they are going to have the services they should pay their just and fair share.

Senator Romney said he thinks both Senators have good arguments. In his own community they have a volunteer fire department. That fire department protects an area called "Daly Acres" without cost to the people of Hamilton. The money is collected by rural tax. There have been attempts to annex and they have resisted. They have almost as many people as Hamilton. Despite the fact there are fire advantages, they have no sewer, no water line, it is floating on top of a mass of cesspools and sanitary conditions are apt to get so bad they may be dangerous. So, in spite of themselves, these people should be coerced into becoming part of Hamilton. In the past it had to be done by petition. It puts a burden on the city to get sufficient signers for the petition. It should be a vote rather than a petition but there are some things in the bill that are good too.

Senator Story said he thinks sanitary conditions are easily corrected by laws now in books. Sanitarians must approve septic tanks. Planning, subdivision and platting acts prevent most of what has happened in the past. Again it becomes a question of whether they will force people for their own good or whether we still believe they should have their own rights. Those people out of town are giving as much to that town as they are getting out of it. The towns welcome their money, they are contributing to the economy of that town. The

other services, sewer, lights, etc., are by contract to the people outside the city. The city should not have done that. He doesn't think the people living outside the city should pay for the cities bad deals.

Senator Thiessen said they get the benefit of the cities but they don't want to pay for the services. Substitute motion failed.

Senator Story made a substitute motion to amend this bill on page 6, line 13, by striking the words "Should a negative" and inserting "unless a favorable". Seconded by Senator Romney. Motion carried unanimously.

Senator Klindt made a motion that HB 556 BE CONCURRED IN AS AMENDED. Seconded by Senator Hall. Motion carried with Senators Goodheart and Story casting dissenting votes.

CONSIDERATION OF HOUSE BILL NO. 815: Expanding the position of Town Clerk; abolishing the position of town treasurer; transferring the duties of a town treasurer to the town clerk.

Representative Asbjornson, sponsor of the bill, said it eliminates the office of town treasurer in smaller towns, generally under 2500 population. The reasons for this that many of these little towns have had a hard time getting enough officers to serve on council. It places the responsibility squarely in one office as to the record keeping of the town. It would work very much like the school boards have worked for many years. There are presently about 75 towns in this category. 58 have already combined their clerk-treasurer operation into one office. Passage of this bill would not preclude the town from having an assistant clerk if it felt it had more duties than the clerk alone could handle. It would simplify examination of books and records of those smaller towns. At the present time in smaller towns a standardized bookkeeping system is being installed and information as to its operation is being taken care of. By passage of this bill, implementation of the standardized bookkeeping system would call for the person responsible to have records to present to the examiner when inspecting books. It [illegible] responsibility where you have more and more federal money that must be accounted for. It will make it possible for those [illegible] system that would be acceptable.

Jim Magnuson, representing the League of Cities and Towns, said [illegible] Mr. Asbjornson said in explaining what it is. He was also [illegible] with the state auditor's office and would like the bill to pass.

[illegible] opponent of House Bill 815, [illegible] the bill is under the responsibility of the [illegible] a part of the duties of the [illegible] the bill would transfer the duties of the two offices. The initial effect [illegible] to the clerk and the treasurer. They have tried to deal with the [illegible] Section 3 [illegible] as much control as possible. The

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

- SECOND HALF - 43rd LEGISLATIVE SESSION 1974 Date 2-28-74

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CORNIE, Chrmn.	✓		
GOODHEART, B.J. (SWEDE), Vice Chrmn.	✓		
Kenney Dales D			
HALL, MRS. BOOTS-D	✓		
JAMES, DAVID-D	✓		
MCOMBER, GORDON-D			
ABER, LARRY-R			
HARRISON, TOM-R		✓	
KLINDT, HERB-R			
NORTHEY, HARRY-R			
STORY, PETE-R			

Exhibit A, Attach to Minutes -5-

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption deduction in the case of a nonresident taxpayer

(1) The exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income."

Approved March 29, 1974

CHAPTER NO. 364

AN ACT ESTABLISHING PREREQUISITES AND PROCEDURES FOR MUNICIPALITIES TO ANNEX CONTIGUOUS AREAS AND AUTHORIZING FREEHOLDERS TO PETITION FOR ANNEXATION; REQUIRING MUNICIPALITIES TO PLAN THE EXTENSION OF GOVERNMENTAL SERVICES TO SUCH AREAS; AND PROVIDING FOR JUDICIAL REVIEW OF ANNEXATION PROCEEDINGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 11-514, R.C.M. 1947, which reads as follows:

11-514. **Title.** The bill shall be entitled "The Planned Community Development Act of 1973."

Section 2. There is a new section to be numbered 11-515, R.C.M. 1947, which reads as follows:

11-515. **Purpose.** It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are causing in many of the Montana cities indiscriminate growth patterns and forcing in many cases citizens of municipalities to be annexed without provision for adequate city services extended and provided for them. Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base. Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services. Therefore, it is the purpose of this act to develop a just and equitable system of adding to and increasing cities boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development and future annexations must consider these principles.

(3) Municipal boundaries should be extended, in accordance with legislative standards applicable throughout the state, to include such areas and to provide the high quality of governmental services needed for the public health, safety and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

Section 3. There is a new section to be numbered 11-516, R.C.M. 1947, which reads as follows:

11-516. **Definitions.** The following terms where used in this act have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder.

Section 4. There is a new section to be numbered 11-517, R.C.M. 1947, which reads as follows:

11-517. **Initiation of extention of corporate limits.** The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this act upon the initiation of the procedure by the board itself; or, whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of fifty-one percent (51%) of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in section 7 [11-520] of this act. If the municipal governing body fails to act within sixty (60) days the petitioners may appeal to the district court under the procedure set down in section 9 [11-522] of this act.

Section 5. There is a new section to be numbered 11-518, R.C.M. 1947, which reads as follows:

11-518. **Plans to provide services.** A municipality exercising authority under this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in section 7 [11-520] of this act, prepare a report setting forth its plans to provide services to such area. This report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

(a) the present and proposed boundaries of the municipality;

(b) the present streets, major truck water mains, sewer interceptors and outfalls and other utility lines, and the proposed extension of such streets and utility lines as required in subsection (3) of this section; and

(c) the general land-use pattern in the areas to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of section 6 [11-519] of this act.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

(a) provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of five (5) years into the future showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city;

(b) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(c) provide for future extension of streets and of major trunk water mains, sewer outfall lines and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(d) if extension of streets and water, sewer or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines; and

(e) a method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. Included within this plan must be a methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over fifty percent (50%) of those resident freeholders in the section or sections to be annexed in such election, the area shall not be annexed.

If the area is serviced currently by adequate water and sewage services, streets, curb and gutters, and no capital improvements are needed to provide adequate services stipulated by this section, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district — mainly police protection, fire protection, garbage collection, street and street maintenance services, as well as continued utility service. In this annexation plan it must be clearly stated that the entire municipality tends to share the tax burden for these services. And if so, the area may be annexed without a bond issue under the provisions of this act.

Section 6. There is a new section to be numbered 11-519, R.C.M. 1947, which reads as follows:

11-519. **Standards to be met before annexation can occur.** (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) it must be contiguous to the municipalities boundaries at the time the annexation proceeding is begun;

(b) no part of the area shall be included within the boundary of another incorporated municipality;

(c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38, R.C.M. 1947; and

(d) no part of the area shall be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of chapter 20, Title 11, R.C.M. 1947, provided that such fire district was originally organized at least ten (10) years prior to the inception of such attempted annexation.

(3) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than two hundred (200) feet beyond the right-of-way of the street.

Section 7. There is a new section to be numbered 11-520, R.C.M. 1947, which reads as follows:

11-520. **Resolution of intention to annex — public hearing notice — action by governing body after hearing.** (1) The governing body of any municipality desiring to annex territory under the provisions of this act shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty (30) days and not more than sixty (60) days following passage of the resolution.

(2) The notice of public hearing shall:

(a) fix the date, hour and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration;

(c) state that the report required in section 5 [11-518] of this act will be available in the office of the municipal official designated by the governing body at least fourteen (14) days prior to the date of the public hearing.

Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least four (4) successive weeks prior to the date of the hearing. The date of the last publication shall not be more than seven (7) days preceding the date of the public hearing. If there be no such newspaper, the municipality shall post the notice in at least five (5) public places within the municipality and at least five (5) public places in the area to be annexed for thirty (30) days prior to the date of public hearing.

(3) At least fourteen (14) days before the date of the public hearing, the governing body shall approve the report provided for in section 5 [11-518] of this act, and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

(4) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in section 5 [11-518] of this act. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

(5) The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by section 5 [11-518] of this act and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of section 5 [11-518]. At any regular or special meeting held no sooner than seven (7) days following the public hearing and no later than sixty (60) days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing, which meets the requirements of section 6 [11-519] of this act, and which the governing body has concluded should be annexed. The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of section 6 [11-519] of this act. The external boundaries of the area to be annexed shall be described by metes and bounds;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by section 5 [11-518] of this act; and

(c) fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve (12) months from the date of passage of the ordinance.

(6) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer or other utilities or improvements, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five (5) years after the effective date of annexation.

(7) If a municipality is considering the annexation of two (2) or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceeding under authority of this act for the annexation of such areas.

(8) For a period of twenty (20) days after the public hearing provided for in section 7 [11-520] of this act the governing body of the municipality shall receive expressions of approval or disapproval in writing, of the proposed annexation from resident freeholders of the territory proposed to be annexed. If a majority of the said resident freeholders, in writing, disapprove the proposed annexation, no further proceedings under this act shall be had, relating to the territory proposed to be annexed or any part thereof, for a period of one (1) year from the date of such disapproval.

Section 8. There is a new section to be numbered 11-521, R.C.M. 1947, which reads as follows:

11-521. **Annexation order.** The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed, is situated. From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete and henceforth such annexed territory or territories shall be a part of the municipal corporation, and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

Section 9. There is a new section to be numbered 11-522, R.C.M. 1947, which reads as follows:

11-522. **Right to court review when area annexed.** (1) Within thirty (30) days following the passage of an annexation ordinance under authority of this act, either a majority of the resident freeholders in the territory or the owners of more than seventy-five percent (75%) in assessed valuation of the real estate in the territory who shall believe that he or they will suffer material injury, by reason of the failure of the municipal governing body to comply with the procedure set forth in this act or to meet the requirements set forth in section 6 [11-519] of this act as they apply to his or their property, may file a petition in the district court of the district in which the municipality is located, seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two (2) or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing.

(3) The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

(a) that the statutory procedure was not followed;

(b) that the provisions of section 5 [11-518] or section 6 [11-519] were not met; or

(c) the court may affirm the action of the governing body without change, or it may:

(i) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(ii) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of section 6 [11-519]; but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(iii) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of section 5 [11-518] of this act are satisfied.

If any municipality fails to take action in accordance with the court's instructions upon remand within three (3) months from receipt of such instructions, the court may in its discretion extend the time for compliance.

(4) Any party to the review proceedings, including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court; provided, that the lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(5) All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful, until and unless they are modified or set aside by the governing body or upon review.

(6) No decisions of the governing body shall be subject to collateral attack and may be reviewed or modified only in the manner provided herein.

Section 10. There is a new section to be numbered 11-523, R.C.M. 1947, which reads as follows:

11-523. **Right to court review when area not annexed.** After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within sixty (60) days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place. The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases. The court, without a jury, shall hear and determine the questions presented in the petition. If the evidence establishes that:

(1) essential municipal services and facilities are not available to the inhabitants of such territory;

(2) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(3) at least one-eighth (⅛) of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality; the court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state.

If, however, the evidence does not establish all three (3) of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

Section 11. There is a new section to be numbered 11-524, R.C.M. 1947, which reads as follows:

11-524. **Certain expenditures authorized.** Municipalities initiating annexations under the provisions of this act are authorized to make expenditures for surveys required to describe the property under consideration, or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines and other capital facilities in the annexed area.

Section 12. There is a new section to be numbered 11-525, R.C.M. 1947, which reads as follows:

11-525. **Severability and construction.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Insofar as the provisions of this act are inconsistent with the provisions

of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

Approved March 29, 1974

CHAPTER NO. 365

AN ACT TO BE KNOWN AS THE "UNIFORM PROBATE CODE" RELATING TO AFFAIRS OF DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS, INCAPACITATED PERSONS AND CERTAIN OTHERS; CONSOLIDATING AND REVISING THE LAW RELATING TO WILLS AND INTESTACY AND THE ADMINISTRATION AND DISTRIBUTION OF ESTATES OF DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS, INCAPACITATED PERSONS AND CERTAIN OTHERS; ORDERING THE POWERS AND PROCEDURES OF THE COURT CONCERNED WITH THE AFFAIRS OF DECEDENTS AND CERTAIN OTHERS; PROVIDING FOR THE TERMINATION OF JOINT TENANCIES AND LIFE ESTATES; REPEALING SECTIONS 22-101 THROUGH 22-117, 91-101, 91-102, 91-107, 91-108, 91-113 THROUGH 91-116, 91-122, 91-125 THROUGH 91-130, 91-135 THROUGH 91-139, 91-141, 91-201, 91-210, 91-214 THROUGH 91-217, 91-227, 91-235, 91-301, 91-303, 91-304, 91-307, 91-308, 91-311 THROUGH 91-314, 91-317, 91-319, 91-321, 91-402 THROUGH 91-405, 91-411 THROUGH 91-418, 91-423 THROUGH 91-430, 91-520 THROUGH 91-522, 91-612A, 91-612B, 91-701, 91-702, 91-801 THROUGH 91-811, 91-901, 91-904, 91-1001 THROUGH 91-1003, 91-1101 THROUGH 91-1105, 91-1107, 91-1301 THROUGH 91-1303, 91-1305 THROUGH 91-1312, 91-1401, 91-1402, 91-1404 THROUGH 91-1406, 91-1501 THROUGH 91-1509, 91-1601 THROUGH 91-1604, 91-1701 THROUGH 91-1723, 91-1801 THROUGH 91-1807, 91-1901 THROUGH 91-1906, 91-2002 THROUGH 91-2004, 91-2101 THROUGH 91-2105, 91-2201 THROUGH 91-2204, 91-2207 THROUGH 91-2213, 91-2401 THROUGH 91-2407, 91-2501 THROUGH 91-2507, 91-2601 THROUGH 91-2612, 91-2701 THROUGH 91-2705, 91-2707 THROUGH 91-2712, 91-2715 THROUGH 91-2720, 91-2723, 91-2724, 91-2801 THROUGH 91-2810, 91-2901, 91-2902, 91-3001 THROUGH 91-3039, 91-3101 THROUGH 91-3109, 91-3201 THROUGH 91-3204, 91-3209 THROUGH 91-3212, 91-3301 THROUGH 91-3313, 91-3405, 91-3407, 91-3601 THROUGH 91-3608, 91-3701 THROUGH 91-3706, 91-3801 THROUGH 91-3803, 91-3901 THROUGH 91-3907, 91-4001 THROUGH 91-4012, 91-4101 THROUGH 91-4106, 91-4311, 91-4314 THROUGH 91-4316, 91-4321, 91-4322, 91-4501 THROUGH 91-4508, 91-4510 THROUGH 91-4518, 91-4522 THROUGH 91-4525, 91-4601 THROUGH 91-4604, 91-4606 THROUGH 91-4608, 91-4610, 91-4611, 91-4701 THROUGH 91-4706, 91-4801 THROUGH 91-4822, 91-4901 THROUGH 91-4904, 91-4906, 91-4907, 91-4909 THROUGH 91-4911, 91-5001 THROUGH 91-5007, 91-5101 THROUGH 91-5111, 91-5202, 91-5203, 91-5210, 91-5301 THROUGH 91-5312, AND 93-1404.4, R.C.M. 1947; AND AMENDING SECTIONS 91-131, 91-218, 91-612, 91-1106, 91-3406, 91-4411, 91-4417, 91-4423, 91-4430, 91-4437, 91-4438, 91-4448, AND 91-4467, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1.

GENERAL PROVISIONS, DEFINITIONS, AND PROBATE JURISDICTION OF COURT
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section 91A-1-101. **Short title.** This act shall be known and may be cited as the Uniform Probate Code.

Section 91A-1-102. **Purposes; rules of construction.** (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(b) to discover and make effective the intent of a decedent in distribution of his property;

(c) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;

(d) to make uniform the law among the various jurisdictions.

Section 91A-1-103. **Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

Section 91A-1-104. **Severability.** If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 91A-1-105. **Construction against implied repeal.** This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Section 91A-1-106. **Effect of fraud and evasion.** Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief including restitution against the perpetrator of the fraud or any person benefitting from the fraud, whether innocent or not (other than a bona fide purchaser for value and without notice). Any proceeding must be commenced within two (2) years after the discovery of